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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,455	01/15/2004	Charles O. Townley	THUMB-604DIV	5634

7590
Christopher John Rudy
209 Huron Ave., Ste. 8
Port Huron, MI 48060

09/16/2009

EXAMINER

PELLEGRINO, BRIAN E

ART UNIT	PAPER NUMBER
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3738

MAIL DATE	DELIVERY MODE
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09/16/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: CHARLES O. TOWNLEY

Application No. 10/758,455
Technology Center 3700

Mailed: September 16, 2009

Before Deborah L. Perry, Supervisory Paralegal Specialist, Review Team.
Perry, Supervisory Paralegal Specialist, Review Team.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on August 24, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER, HEADINGS

A review of the file indicates that the Examiner's Answer filed July 8, 2009, does not comply with the guidelines provided in MPEP § 1207.02 because it does not contain all of the required heading items.

An in-depth review of the Examiner's Answer indicates that the following section is missing from the Examiner's Answer mailed July 8, 2009:

- 1) "Related Appeals and Interferences"
- 2) It is also noted that the Grounds of Rejection heading appears twice on page 3.

Correction is required.

EXAMINER'S ANSWER, EVIDENCE RELIED UPON

Section §1207.02 of the *Manual of Patent Examining Procedure* (MPEP) (Eighth Edition, Rev. 6, September 2007) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . . .

- (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner's Answer mailed July 8, 2009, is deficient because the "Evidence Relied Upon" section fails to include the reference Wright Medical Technology cited on page 5 in the Examiner's Answer's grounds of rejection of claim 37 under 35 USC § 103(a) and the reference ASTM cited on page 6 in the rejection of claim 42 under 35 USC § 103(a).

Appropriate correction is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) vacate the Examiner's Answer, filed July 8, 2009,
- 2) for the Examiner to issue a PTOL-90 correcting the Examiner's Answer mailed July 8, 2009, to include the Related Appeals and Interferences heading and the missing references listed under the Evidence Relied Upon section, paragraph (8); and
- 3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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